IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

HOLLY STIEGEL,

Plaintiff,

v.

USAA CASUALTY INSURANCE COMPANY and AUTO INJURY SOLUTIONS, INC.

Defendant.

CASE NO.: 4:16-CV-00346-CDL

MOTION TO REDACT AND MAINTAIN UNDER SEAL

Pursuant to the Court's Order dated June 1, 2017 (hereinafter, "Order"), USAA Casualty Insurance Company ("USAA CIC") moves to redact certain portions of the Amended Complaint and moves to maintain under seal certain exhibits attached to Plaintiff's Amended Complaint.

Although the Order does not specifically mention exhibits to the Amended Complaint, USAA CIC moves to maintain under seal the following exhibits:

- Exhibit I - Master Service Agreement;
- Exhibit J - Statement of Work; and
- Exhibit K - Subcontractors.

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In addition, USAA CIC moves to redact all quoted portions of the Master Service Agreement in the Amended Complaint, including but not limited to:

- The complete quotation that follows: "MBA is defined as. . ." in the first partial paragraph on page 9 of the Amended Complaint (regarding which Plaintiff cites to "MSA, Ex. I hereto, p. 3, under Para 1.1, Definitions");
- The complete quotation that follows: "The MSA sets forth the fact that AIS. . ." in the first full paragraph on page 9 of the Amended Complaint. (regarding which Plaintiff cites to "MSA, Ex. I hereto, Para. 15.9.1.1, p. 23").
- The complete quotation that follows: ". . . hired to perform services under the MSA. . ." in the first full paragraph on page 9 of the Amended Complaint. (Regarding which Plaintiff cites to "MSA, Ex. I hereto, Pam. 13.1.4, p. 20").
- The complete quotation that follows: "AIS also agrees in the MSA to. . ." in the first partial paragraph on page 10 of the Amended Complaint. (Regarding which Plaintiff cits to "MSA, Ex. I hereto, Para. 15.9.1.3, p. 23").
- The complete quotation that follows: "'Rules' is defined as follows:" in the first full paragraph on page 10 of the Amended Complaint. (Regarding which, Plaintiff cites to "Ex. J hereto, p. 2").

A redacted version of the Amended Complaint is attached as Exhibit "A."

The requested relief is necessary to protect USAA CIC's confidential business interests. The documents at issue are competitively sensitive business documents that are maintained as highly confidential within the company and constitute trade secrets. (See Affidavit of Kristina Newman, attached herein as Exhibit "B"). Permitting such documents to be filed and viewed publicly by anyone would be highly damaging to USAA CIC's competitive position.

USAA CIC notes that it has voluntarily produced the contract with AIS to Plaintiff under the Court's Protective Order. As a result, Plaintiff is free to use the document in this litigation subject to the terms of the Protective Order. USAA CIC merely seeks to avoid having the document filed publicly where anyone, including USAA CIC's competitors, can access it with the click of a mouse.

USAA CIC further notes that the Court's Protective Order states that "the Court finds that [the Protective Order] shall not apply to exclude evidence from public disclosure when that evidence is relied upon in support of or opposition to any motion or relevant in any hearing or trial. . .without a showing of a compelling reason." (See Doc. 15, p. 5). Under the above-quoted provision in the protective order, a decision on unsealing the documents is premature because no party has yet relied on such evidence "in support of or opposition to any motion or relevant in any hearing or trial." Plaintiff's Amended Complaint, which is not a motion and

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which is not relevant to any hearing or trial, is not contemplated within this provision from the Protective Order.

Alternatively, USAA CIC respectfully submits that recently added Defendant Auto injury Solutions, Inc. ("AIS"), which is a party to the contract and now a party to this case, has a strong interest in the confidentiality of the contract as well. In fairness, AIS should have the opportunity to weigh in on the necessity for maintaining the contract under seal. Further, AIS may file a Motion to Dismiss the Amended Complaint against it, and, if so, the relevance of the Contract may depend on the outcome of that motion. USAA CIC therefore requests that, at the very least, the Court order that any portion of the Complaint be redacted and the above-described exhibits remain under seal until such time as AIS has had the opportunity to brief the issue. Rather than a substantive ruling, this would be a prophylactic measure akin to a temporary restraining order to preserve the status quo.

ARGUMENT

USAA CIC has produced its contract with its vendor AIS to Plaintiffs under the Court's Protective Order. Plaintiffs have attached three parts of the contract: the Master Service Agreement, Statement of Work, and Subcontractors addendum to their Amended Complaint, and have quoted from portions of these documents in the text of the Amended Complaint. USAA CIC has moved to redact any portions of the Amended Complaint that directly quote from the AIS Contract and to maintain Exhibits I, J, and K under seal.

The U.S. Supreme Court has recognized the importance of protecting the privacy interests of litigants: "Liberal discovery is provided for the sole purpose of assisting in the preparation and trial, or the settlement, of litigated disputes . . . . It is clear from experience that pretrial discovery by depositions and interrogatories has a significant potential for abuse. This abuse is not limited to matters of delay and expense; discovery also may seriously implicate privacy interests of litigants and third parties. " Seattle Times Co. v. Rhinehart, 467 U.S. 20, 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984). Here, the question for the Court is not whether the document will be produced (it already has been); it is whether these confidential documents will be made publicly available for anyone to view, including competitors. The internal contract between USAA CIC and AIS is of no public concern. The privacy interests of USAA CIC far outweigh any competing interest.

Although the Court does not have to find that the documents strictly qualify as trade secrets in order to merit protection from public disclosure, USAA CIC shows the Court that these documents *are* in fact maintained as highly confidential trade secrets. O.C.G.A. § 10-1-761(4) imposes a two-part test for what information constitutes a "trade secret." First, the entity claiming the trade secret "must "[d]erive[ ] economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use." Second, the information must be "the subject of efforts that are reasonable under the circumstances to maintain its secrecy." United HealthCare of Ga., Inc. v. Ga. Dep't of Cmty. Health, 293 Ga. App. 84, 89, 666 S.E.2d 472, 478, (Ga. Ct. App. 2008) (internal citations omitted).

As for the first prong in the test, USAA shows that it derives actual economic value from its contract with AIS. Kristina Newman testified that the contract "sets forth in detail the processes, methods, and systems that are essential to the overall medical bill audit program, and such information constitutes a distinct and valuable component of USAA's business model for MedPay and PIP claims, but only so long as it is protected from disclosure to USAA's competitors." (Newman Affidavit ¶12). Further, the AIS contract is valuable to USAA CIC because the company has made significant investments over time. (Newman Affidavit ¶ 16). Such investments will be negated if the contract were made public.

As for the second prong in the test, USAA CIC undertakes reasonable efforts to maintain the secrecy of these documents. USAA has limited the access to the AIS Contract to only those persons with the need for the information to perform their job functions and an actual business need for access to the AIS Contract.

(Newman Affidavit ¶ 18). USAA CIC restricts disclosure of this information outside USAA in order to protect USAA's business interests and competitive position.

As for electronic security, only USAA employees who have agreed to abide by USAA's information security procedures *and* have a business need can access this information. (Newman Affidavit ¶ 19). In other words, the contract is available only to a sub-set of employees who have a business need to access it. Further, employees who are given access to computer systems have a user identification number and password and must agree not to disclose their passwords to others. Employees with computer access also must agree not to access computer programs or data files to which they have no authority or have not been authorized to use. (Newman Affidavit ¶ 19).

USAA employees are specifically instructed on their job requirements to protect confidential and proprietary information and intellectual property. USAA regularly sends reminders of these security policies to all its employees, who are also required to annually complete training on USAA's security guidelines. USAA employees are required upon the conclusion of their employment to return any company documents to the company. (Newman Affidavit ¶ 19).

In addition to electronic security measures to protect the confidentiality of these documents, USAA CIC provides strict physical security measures as well. USAA's offices are protected by security guards and anyone entering the building must have a personalized access card. Employees who terminate must surrender their access cards. Visitors are required to sign in at the lobby and must be escorted at all times while inside the premises. (Newman Affidavit ¶ 20).

Thus, the AIS Contract meets the two-pronged test under O.C.G.A. § 10-1-761(4) and thus meets the standard of a trade secret. For that reason, it is proper for the Court to maintain such documents under seal in perpetuity or at least until the contract is used to support or oppose a "motion or [is] relevant in any hearing or trial" as set forth in the Court's Protective Order. Alternatively, in fairness to the newly added Defendant AIS, USAA CIC asks the Court to, at a minimum, order redaction of all quotations from the AIS contract contained in Plaintiffs' Amended Complaint, and maintain Exhibits I, J, and K under seal until AIS has had an opportunity to weigh in on the confidentiality of this document.

(Signature line on following page)

Respectfully submitted, this 8th day of June, 2017.

BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ, PC

/s/ W. Shawn Bingham
MARK A. BARBER
Georgia Bar No. 036875
W. SHAWN BINGHAM
Georgia Bar No. 839706
Counsel for Defendant
USAA Casualty Insurance Company

Monarch Plaza, Suite 1600
3414 Peachtree Street
Atlanta, Georgia 30326
Telephone: (404) 577-6000
Facsimile: (404) 221-6501
Email: mbarber@bakerdonelson.com
Email: sbingham@bakerdonelson.com

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2017, I electronically filed the foregoing **MOTION TO REDACT AND MAINTAIN UNDER SEAL** with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following counsel of record:

Gary O. Bruce, Esq.
Mitchell B. Ladson, Esq.
Gary O. Bruce, P.C.
912 Second Avenue
Columbus, GA 31901

Jefferson C. Callier, Esq.
The Callier Firm
1430 Wynnton Road
P.O. Box 2604
Columbus, GA 3196

BAKER, DONELSON, BEARMAN
CALDWELL & BERKOWITZ, PC

/s/ W. Shawn Bingham
W. SHAWN BINGHAM
Georgia State Bar No. 839706